

By: Senator(s) DeBar

To: Education;
Appropriations

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2594

1 AN ACT TO REENACT SECTION 37-181-1, MISSISSIPPI CODE OF 1972,
2 WHICH IS THE TITLE SECTION OF THE EQUAL OPPORTUNITY FOR STUDENTS
3 WITH SPECIAL NEEDS ACT; TO AMEND SECTION 37-181-3, MISSISSIPPI
4 CODE OF 1972, TO REVISE CERTAIN DEFINITIONS; TO AMEND SECTION
5 37-181-5, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT QUALIFYING
6 EXPENSES MUST HAVE BEEN INCURRED WITHIN THE AWARDED ESA SCHOOL
7 YEAR; TO PROVIDE THAT COMPUTER HARDWARE AND SOFTWARE PURCHASED
8 WITH ESA FUNDS SHALL BE DONATED TO A PUBLIC SCHOOL OR LIBRARY ONCE
9 A STUDENT IS NO LONGER ELIGIBLE FOR THE ESA PROGRAM; TO PROVIDE
10 THAT AN ORIGINAL ITEMIZED RECEIPT FOR EXPENSES IS TO BE RETURNED
11 TO THE DEPARTMENT; TO PROVIDE THAT A STUDENT'S REMAINING ESA FUNDS
12 SHALL BE DISTRIBUTED TO THE STUDENT'S HOME SCHOOL DISTRICT UPON A
13 STUDENT'S RETURN TO HIS OR HER HOME SCHOOL DISTRICT; TO AMEND
14 SECTION 37-181-7, MISSISSIPPI CODE OF 1972, TO REQUIRE THE
15 DEPARTMENT TO MAINTAIN THE WAITLIST FOR ELIGIBLE STUDENTS IN
16 CHRONOLOGICAL ORDER; TO AMEND SECTION 37-181-9, MISSISSIPPI CODE
17 OF 1972, TO REMOVE THE AUTHORITY OF THE DEPARTMENT TO CONTRACT
18 WITH A QUALIFIED NONPROFIT ORGANIZATION TO ADMINISTER THE ESA
19 PROGRAM; TO AMEND SECTION 37-181-11, MISSISSIPPI CODE OF 1972, TO
20 CLARIFY THAT ONLY THE PARENT OR GUARDIAN WHO SUBMITTED THE ESA
21 APPLICATION IS AUTHORIZED TO SEEK REIMBURSEMENT FOR QUALIFIED
22 EXPENSES; TO AMEND SECTION 37-181-13, MISSISSIPPI CODE OF 1972, TO
23 REVISE PEER'S REVIEW OF THE ESA PROGRAM; TO AMEND SECTION
24 37-181-15, MISSISSIPPI CODE OF 1972, TO REQUIRE ELIGIBLE SCHOOLS
25 TO PROVIDE PARENTS WITH DETAILS OF ITS STUDENTS' RECORD OF
26 ACHIEVEMENT AND ITS CAPACITY TO SERVE THE PARTICIPATING STUDENTS
27 WITHIN THE SCOPE OF THEIR IEP; TO REQUIRE ELIGIBLE SCHOOLS TO
28 MANDATE A STUDENT ASSESSMENT; TO REQUIRE ELIGIBLE SCHOOLS TO
29 NOTIFY A PARENT OR GUARDIAN APPLYING FOR THE ESA PROGRAM THAT THE
30 PARENT OR GUARDIAN WAIVES THE RIGHT OF THE PARTICIPATING STUDENT
31 TO AN INDIVIDUAL ENTITLEMENT TO A FREE AND APPROPRIATE PUBLIC
32 EDUCATION; TO AMEND SECTION 37-181-17, MISSISSIPPI CODE OF 1972,
33 TO LIMIT THE DEPARTMENT'S REGULATION OF THE EDUCATIONAL PROGRAM OF
34 A NONPUBLIC SCHOOL, POSTSECONDARY INSTITUTION OR EDUCATIONAL



35 SERVICE PROVIDER TO THE AUTHORITY OF THIS CHAPTER; TO REQUIRE
36 PARTICIPATING SCHOOLS TO SUBMIT STUDENT PERFORMANCE DATA TO THE
37 DEPARTMENT AT THE END OF THE SCHOOL YEAR; TO REENACT SECTION
38 37-181-19, MISSISSIPPI CODE OF 1972, WHICH PROVIDES THAT THE
39 DEPARTMENT MAY RECEIVE AND EXPEND CONTRIBUTIONS FROM ANY PUBLIC OR
40 PRIVATE SOURCE TO FUND ESAS FOR PARTICIPATING STUDENTS; TO REENACT
41 SECTION 37-181-21, MISSISSIPPI CODE OF 1972, WHICH PROVIDES THAT
42 THE PROVISIONS OF THIS ACT ARE SEVERABLE; TO CREATE NEW SECTION
43 37-181-23, MISSISSIPPI CODE OF 1972, TO CODIFY AND EXTEND THE DATE
44 OF THE AUTOMATIC REPEALER ON SECTIONS 37-181-1 THROUGH 37-181-23;
45 TO AMEND SECTION 12, CHAPTER 441, LAWS OF 2015, TO DELETE THE
46 AUTOMATIC REPEALER FROM WITHIN THE CHAPTER LAWS; AND FOR RELATED
47 PURPOSES.

48 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

49 **SECTION 1.** Section 37-181-1, Mississippi Code of 1972, is
50 reenacted as follows:

51 37-181-1. This chapter shall be known and may be cited as
52 "The Equal Opportunity for Students with Special Needs Act."

53 **SECTION 2.** Section 37-181-3, Mississippi Code of 1972, is
54 amended as follows:

55 37-181-3. The terms used in this chapter shall have the
56 meanings ascribed herein, unless the context clearly indicates
57 otherwise:

58 (a) "ESA program" means * * * ~~a five-year pilot program~~
59 ~~to implement~~ the Education Scholarship Account (ESA) program
60 created in this chapter.

61 (b) "Eligible student" means any student who has had an
62 active Individualized Education Program (IEP) within the
63 past * * * ~~five (5)~~ three (3) years and has maintained
64 eligibility.

65 (c) "Participating student" means any student who meets
66 the qualifications of an eligible student as defined in paragraph



67 (b) of this section and is participating in an ESA program at an
68 eligible school.

69 (* * *ed) "Parent" means a resident of this state who
70 is a parent, legal guardian, custodian or other person with the
71 authority to act on behalf of the eligible student.

72 (* * *de) "Department" means the State Department of
73 Education.

74 (* * *ef) "Home school district" means the public
75 school district in which the student resides.

76 (* * *fg) "Eligible school" means a * * *~~nonpublic~~
77 state-accredited special purpose school, a state-accredited
78 nonpublic school, or a nonpublic school located in the state that
79 has enrolled a participating student and is providing services for
80 the participating student's disability or special education needs,
81 or is providing services addressing a participating student's
82 IEP. * * * ~~An eligible school must be accredited by a state or~~
83 regional accrediting agency or possess a provisional letter of
84 accreditation from a state or regional accrediting agency or be
85 approved/licensed by the State Department of Education. An
86 eligible school does not include a home instruction program under
87 Section 37-13-91, Mississippi Code of 1972.

88 (* * *gh) "Tutor" means a person who is certified or
89 licensed by a state, regional, or national certification, * * *~~or~~
90 licensing, or accreditation organization or who has earned a valid



91 teacher's license or who has experience teaching at an eligible
92 postsecondary institution.

93 (* * *hi) "Postsecondary institution" means a
94 community college, college, or university accredited by a state,
95 regional or national accrediting organization.

96 (* * *ij) "Educational service provider" means an
97 eligible school, tutor, or other person or organization that
98 provides education-related services and products to participating
99 students.

100 (k) "Awarded ESA school year" means the duration of the
101 school year in which ESA program funds are deposited in a
102 student's ESA.

103 (l) Nothing in this section shall negate federal law
104 requiring public school districts to identify and provide services
105 to students with disabilities who live within the public school
106 district, including those enrolled in nonpublic schools or home
107 instruction programs.

108 (m) An eligible school shall provide notice to a
109 participating student's home school district when the eligible
110 student enrolls in the eligible school with an ESA. Furthermore,
111 a public school district providing special education services to a
112 participating student enrolled in an eligible school shall be
113 reimbursed by the eligible school, or parent or guardian who
114 submitted the ESA application, fair market value for any special
115 education services rendered to the eligible student in an amount



116 not to exceed the amount of ESA funds reimbursed to the eligible
117 student during the awarded ESA school year.

118 **SECTION 3.** Section 37-181-5, Mississippi Code of 1972, is
119 amended as follows:

120 37-181-5. (1) An eligible student shall qualify to
121 participate in the ESA program if the parent signs an agreement
122 promising:

123 (a) To provide an organized, appropriate educational
124 program with measurable annual goals to their participating
125 student and * * *, ~~to the extent reasonably deemed appropriate by~~
126 ~~the parent,~~ to provide an education for the * * * ~~qualified~~
127 participating student in at least the subjects of reading,
128 grammar, mathematics, social studies and science;

129 (b) To document their participating student's
130 disability at intervals and in a manner required under subsection
131 (8) of this section;

132 (c) Not to enroll their participating student in a
133 public school and to acknowledge as part of the agreement that
134 the * * * ~~home school district~~ eligible school has provided clear
135 notice to the parent that the participating student has no
136 individual entitlement to a free appropriate public education
137 (FAPE) from their home school district, including special
138 education and related services, for as long as the student is
139 participating in the ESA program;



140 (d) Not to file for their participating student a
141 certificate of enrollment indicating participation in a home
142 instruction program under Section 37-13-91, Mississippi Code of
143 1972; and

144 (e) Not to participate in the Mississippi Dyslexia
145 Therapy Scholarship for Students with Dyslexia Program or the
146 Mississippi Speech-Language Therapy Scholarship for Students with
147 Speech-Language Impairments Program while participating in the ESA
148 program.

149 (2) Parents shall use the funds deposited in a participating
150 student's ESA for any of the following qualifying expenses, which
151 shall be incurred within the awarded ESA school year, to educate
152 the student using any of the below methods or combination of
153 methods that meet the requirement in subsection (1)(a) of this
154 section:

155 (a) Tuition and/or academic fees at an eligible school;

156 (b) Textbooks related to academic coursework;

157 (c) Payment to a tutor, as defined in Section
158 37-181-3(h);

159 (d) Payment for purchase of curriculum, including any
160 supplemental materials required by the curriculum;

161 * * * ~~(e) Fees for transportation to and from an educational~~
162 ~~service provider paid to a fee-for-service transportation~~
163 ~~provider;~~



164 ~~_____ (f) Tuition and/or fees for online learning programs or~~
165 ~~courses;~~

166 (* * * ge) Fees for nationally standardized
167 norm-referenced achievement tests, including alternate
168 assessments; and fees for Advanced Placement examinations or
169 similar courses and any examinations related to college or
170 university admission;

171 (* * * hf) Educational services or therapies from a
172 licensed or certified practitioner or provider, including licensed
173 or certified paraprofessionals or educational aides;

174 * * * ~~(i) Services provided by a public school, including~~
175 ~~individual classes and extracurricular programs;~~

176 (* * * gj) Tuition and fees related to dual enrollment
177 at a postsecondary institution;

178 (* * * kh) Textbooks related to academic coursework at
179 a postsecondary institution;

180 (* * * li) Surety bond payments if required by the
181 department;

182 (* * * mj) No more than Fifty Dollars (\$50.00) in
183 annual consumable school supplies necessary for educational
184 services and therapies, daily classroom activities, and tutoring;

185 (* * * nk) Computer hardware and software and other
186 technological devices if an eligible school, licensed or certified
187 tutor, licensed or certified educational service practitioner or
188 provider, or licensed medical professional verifies in writing



189 that these items are essential for the student to meet annual,
190 measurable educational and academic goals or goals within the
191 scope of the eligible student's IEP. Once a student is no
192 longer * * * ~~eligible for participating in the ESA program,~~
193 computer hardware and software and other technological devices
194 purchased with ESA funds * * * ~~may be donated to a library or a~~
195 ~~nonprofit organization with expertise and training in working with~~
196 ~~parents to educate children with disabilities or a nonprofit~~
197 ~~organization with expertise and training in working with disabled~~
198 ~~adults shall be donated to a public school or public library.~~
199 Qualifying expenses for computer hardware and software include
200 only those expenses incurred within the awarded ESA school year.

201 (3) Neither a participating student, nor anyone on the
202 student's behalf, may receive cash or cash-equivalent items, such
203 as gift cards or store credit, from any refunds or rebates from
204 any provider of services or products in * * * ~~this~~ the ESA
205 program. Any refunds or rebates shall be credited directly to the
206 participating student's ESA. The funds in an ESA may only be used
207 for education-related purposes as defined in this chapter.

208 (4) (a) Eligible schools, postsecondary institutions and
209 educational service providers that serve participating students
210 shall provide * * * ~~parents~~ the parent or guardian who submitted
211 the ESA program application with * * * a an original itemized
212 receipt, including the service provider's name and address, for
213 all qualifying expenses. The parent or guardian who submitted the



214 ESA application shall provide the original itemized receipt to the
215 department.

216 (b) In lieu of providing the parent or guardian who
217 submitted the ESA program application with an original itemized
218 receipt, the eligible schools, postsecondary institutions and
219 educational service providers may provide to the department an
220 original itemized receipt approved and signed off on by the parent
221 or guardian who submitted the ESA application, including the
222 service provider's name and address, for all qualifying expenses.

223 (* * *⁴⁵) Payment for educational services through an ESA
224 shall not preclude parents from paying for educational services
225 using non-ESA funds.

226 * * * ~~(5) ESA funds may not be used to attend an eligible~~
227 ~~school that maintains its primary location in a state other than~~
228 ~~Mississippi unless that school is approved for the Educable Child~~
229 ~~Program; or unless the parent verifies in writing that their child~~
230 ~~cannot reasonably obtain appropriate special education and related~~
231 ~~services in Mississippi at a location within thirty (30) miles of~~
232 ~~their legal residence.~~

233 (6) For purposes of continuity of educational attainment,
234 students who enroll in the ESA program shall remain eligible to
235 receive quarterly ESA payments until the participating student
236 returns to a public school, completes high school, completes the
237 school year in which the student reaches the age of twenty-one
238 (21), or does not have eligibility verified by a parent as



239 required under subsection (8) of this section, whichever occurs
240 first.

241 (7) Any funds remaining in a student's Education Scholarship
242 Account upon completion of high school shall be returned to the
243 state's General Fund.

244 (8) Every three (3) years after initial enrollment in the
245 ESA program, a parent of a participating student, except a student
246 diagnosed as being a person with a permanent disability, shall
247 document that the student continues to be identified by the school
248 district, a federal or state government agency, or a licensed
249 physician or psychometrist as a child with a disability, as
250 defined by the federal Individuals with Disabilities Education Act
251 (20 USCS Section 1401(3)).

252 (9) * * * ~~A participating~~ An eligible student shall be
253 allowed to return to his home school district at any time after
254 enrolling in the ESA program, in compliance with regulations
255 adopted by the department providing for the least disruptive
256 process for doing so. Upon * * * ~~a~~ the participating student's
257 return to his or her home school district, * * * ~~that~~ the
258 student's Education Scholarship Account shall be closed and any
259 remaining funds shall be * * * ~~returned~~ distributed to the * * *
260 ~~state's General Fund~~ student's home school district at the end of
261 the awarded ESA school year.

262 (10) The department shall begin accepting applications for
263 the ESA program on July 1, * * * ~~2015~~ 2020.



264 **SECTION 4.** Section 37-181-7, Mississippi Code of 1972, is
265 amended as follows:

266 37-181-7. (1) The ESA program created in this chapter shall
267 be limited to five hundred (500) students in the school year
268 2015-2016, with new enrollment limited to five hundred (500)
269 additional students each year thereafter. Subject to
270 appropriation from the General Fund, each student's ESA shall be
271 funded at Six Thousand Five Hundred Dollars (\$6,500.00) for school
272 year 2015-2016. For each subsequent year, this amount shall
273 increase or decrease by the same proportion as the base student
274 cost under Section 37-151-7(1) (b) is increased or decreased.

275 (2) Subject to appropriation, eligible students shall be
276 approved for participation in the ESA program as follows:

277 (a) Until participation in the ESA program reaches
278 fifty percent (50%) of the annual enrollment limits in subsection
279 (1) of this section, students shall be approved on a first-come,
280 first-served basis, with applications being reviewed on a rolling
281 basis;

282 (b) After participation reaches fifty percent (50%) of
283 the annual enrollment limits in subsection (1) of this section,
284 the department shall set annual application deadlines for the
285 remaining number of available ESAs and begin to maintain a waiting
286 list of eligible students. * * * ~~If the number of eligible~~
287 ~~students who apply for the program exceeds the remaining number of~~
288 ~~ESAs available, the department shall fill the available spaces~~



289 ~~using a random selection process that gives preference to students~~
290 ~~with an active Individualized Education Program (IEP). The~~
291 waitlist will be maintained in the chronological order in which
292 applications are received. The department shall award ESA program
293 applications in chronological order according to the waitlist; and

294 (c) Participating students who remain eligible for the
295 ESA program are automatically approved for participation for the
296 following year and are not subject to the random selection
297 process.

298 (3) No funds for an ESA may be expended from the Mississippi
299 Adequate Education Program, nor shall any school district be
300 required to provide funding for an ESA.

301 **SECTION 5.** Section 37-181-9, Mississippi Code of 1972, is
302 amended as follows:

303 37-181-9. (1) The department shall create a standard form
304 that parents of students submit to establish their student's
305 eligibility for an Education Scholarship Account. The department
306 shall ensure that the application is readily available to
307 interested families through various sources, including the
308 department's website and the copy of procedural safeguards
309 annually given to parents.

310 (2) The department shall provide parents of participating
311 students with a written explanation of the allowable uses of
312 Education Scholarship Accounts, the responsibilities of parents



313 and the duties of the department. This information shall also be
314 made available on the department's website.

315 (3) The department shall annually notify all students with
316 an IEP of the existence of the ESA program and shall ensure that
317 lower-income families are made aware of their potential
318 eligibility.

319 (4) The department may deduct an amount up to a limit of six
320 percent (6%) from appropriations used to fund Education
321 Scholarship Accounts to cover the costs of overseeing the funds
322 and administering the ESA program.

323 (5) (a) The department shall make a determination of
324 eligibility, and shall approve the application, within twenty-one
325 (21) business days of receiving an application for participation
326 in the ESA program, subject to the provisions of Section
327 37-181-3(b).

328 (b) The department shall provide for a procedure that
329 children with a ruling of hearing impairment or children suspected
330 of a hearing loss shall receive a comprehensive educational
331 assessment which may include the areas of cognitive development,
332 language/speech, audiological and academic achievement from the
333 state-funded Mississippi Assistance Center for Hearing Loss.
334 Children with a ruling of visual impairment or children suspected
335 of a visual impairment shall receive a comprehensive low vision
336 evaluation from the state-funded Low Vision Clinic.



337 (6) The home school district shall provide the parent of a
338 participating student with a complete copy of the student's school
339 records, while complying with the Family Educational Rights and
340 Privacy Act of 1974 (20 USCS Section 1232(g)). The record shall
341 be provided no later than thirty (30) days after a parent signs an
342 agreement to participate in the ESA program.

343 * * * ~~(7) The State Board of Education may contract with a~~
344 ~~qualified nonprofit organization with expertise and training in~~
345 ~~working with parents to educate children with disabilities to~~
346 ~~administer the program.~~

347 **SECTION 6.** Section 37-181-11, Mississippi Code of 1972, is
348 amended as follows:

349 37-181-11. (1) To ensure that funds are spent
350 appropriately, the State Department of Education shall adopt rules
351 and policies necessary for the administration of the ESA program,
352 including the auditing of Education Scholarship Accounts, and
353 shall conduct or contract for random audits throughout the year.

354 (2) (a) The department * * * ~~or qualified nonprofit~~ shall
355 develop a system for payment of benefits, including, but not
356 limited to, allowing educational service providers to invoice the
357 department * * * ~~or designated nonprofit~~ for qualified expenses
358 consistent with Section 37-181-5(2), or allowing * * * ~~parents the~~
359 parent or guardian who submitted the ESA program application to
360 seek reimbursement for qualified expenses consistent with Section
361 37-181-5(2).



362 (b) The department * * * ~~or qualified nonprofit~~ may
363 make payments to educational service providers or reimbursement
364 to * * * ~~parents~~ the parent or guardian who submitted the ESA
365 program application via check or warrant or electronic funds
366 transfer or any other means of payment deemed to be commercially
367 viable or cost-effective.

368 (c) The department may also establish by rule that some
369 payments to educational service providers will be made on a
370 quarterly basis, rather than an annual basis, if the educational
371 services will be rendered over an extended period of time.

372 (3) The department shall adopt a process for removing
373 educational service providers that defraud parents and for
374 referring cases of fraud to law enforcement.

375 (4) The department shall establish or contract for the
376 establishment of an online anonymous fraud reporting service.

377 (5) The department shall establish or contract for the
378 establishment of an anonymous telephone hotline for fraud
379 reporting.

380 **SECTION 7.** Section 37-181-13, Mississippi Code of 1972, is
381 amended as follows:

382 37-181-13. (1) The Joint Legislative Committee on
383 Performance Evaluation and Expenditure Review (PEER) shall prepare
384 a biannual report, beginning in 2018 and every two (2) years
385 thereafter, assessing * * * ~~the sufficiency of funding for~~
386 efficacy of Education Scholarship Accounts, to include the



387 sufficiency of funding, and recommending any suggested changes in
388 state law or policy necessary to improve the ESA program.

389 (2) The report shall assess:

390 (a) The degree to which eligible schools are meeting
391 the needs of participating students as defined by the
392 participating students' IEPs;

393 (* * *ab) The level of participating students'
394 satisfaction with the ESA program;

395 (* * *bc) The level of parental satisfaction with the
396 ESA program;

397 (* * *ed) Participating students' performance, both
398 pre-assessment and post-assessment, on the eligible school's
399 current assessment used to demonstrate academic progress, a
400 nationally standardized norm-referenced achievement * * *~~tests~~
401 for those participating students whose parents have requested
402 participation in such test, or a current state board-approved
403 screeener, as required in Section 37-181-15(f);

404 (* * *de) Participating students' performance on
405 Advanced Placement examinations or similar courses and any
406 examinations related to college or university admission;

407 (* * *ef) The four-year high school graduation rates
408 and college acceptance rates of participating students;

409 (* * *fg) The percentage of funds used for each
410 qualifying expense identified in Section 37-181-5(2); and



411 (* * *gh) The fiscal impact to the state and home
412 school districts of the ESA program, which must consider both the
413 impact on revenue and the impact on expenses. Furthermore, the
414 fiscal savings associated with students departing public schools
415 must be explicitly quantified, even if the public school losing
416 the student(s) does not reduce its spending accordingly.

417 (3) The report shall:

418 (a) Apply appropriate analytical and behavioral science
419 methodologies to ensure public confidence in the study; and

420 (b) Protect the identity of participating students and
421 schools by, among other things, keeping anonymous all
422 disaggregated data.

423 (4) PEER may accept grants to assist in funding the study.

424 (5) PEER shall provide the Legislature with a final copy of
425 the * * *~~evaluation~~ report of the ESA program before December
426 31 * * *,~~2018~~ each year the report is due. At the same time, the
427 study shall also be placed in a prominent location on the PEER
428 website.

429 (6) PEER must make its data and methodology available for
430 public review while complying with the requirements of the Family
431 Educational Rights and Privacy Act (20 USCS Section 1232(g)).

432 **SECTION 8.** Section 37-181-15, Mississippi Code of 1972, is
433 amended as follows:

434 37-181-15. To ensure that students are treated fairly and
435 kept safe, all eligible schools shall:



436 (a) Comply with the nondiscrimination policies set
437 forth in 42 USCS 1981;

438 (b) Prior to a participating student's application for
439 enrollment, provide parents with details of the school's programs,
440 record of student achievement, qualifications, experience, * * *
441 and capacities to serve students with special needs, and capacity
442 to serve the participating student within the scope of their IEP;

443 (c) Comply with all health and safety laws or codes
444 that apply to nonpublic schools;

445 (d) Hold a valid occupancy permit if required by their
446 municipality;

447 (e) Have no public record of fraud or malfeasance;

448 (f) * * *—~~Offer~~ Require participating students * * *
449 the option of taking to take a pre-assessment at the beginning of
450 the school year and a post-assessment at the end of the school
451 year. The eligible school shall have the option to select their
452 current assessment used to demonstrate academic progress, a
453 nationally standardized norm-referenced achievement test, or a
454 current state board-approved screener;

455 (g) Notify a parent or guardian applying for the ESA
456 program that the parent or guardian waives the right of the
457 participating student to an individual entitlement to a free and
458 appropriate public education (FAPE) from their home school
459 district, including special education and related services, for as
460 long as the student is participating in the ESA program;



461 (* * *~~gh~~) Conduct criminal background checks on
462 employees * * *. ~~The eligible school then shall~~ and:

463 (i) Exclude from employment any person not
464 permitted by state law to work in a nonpublic school; and

465 (ii) Exclude from employment any person who might
466 reasonably pose a threat to the safety of students * * *~~;~~ and

467 (i) An eligible school shall certify to the department
468 upon enrollment of a participating student that the eligible
469 school shall provide services for the participating student's
470 disability or special education needs, or shall provide services
471 addressing a participating student's IEP.

472 **SECTION 9.** Section 37-181-17, Mississippi Code of 1972, is
473 amended as follows:

474 37-181-17. (1) An eligible nonpublic school is autonomous
475 and not an agent of the state or federal government and therefore:

476 (a) The State Department of Education or any other
477 government agency shall not * * *~~in any way~~ regulate the
478 educational program of a nonpublic school, postsecondary
479 institution or educational service provider that accepts funds
480 from the parent of a participating student beyond the requirements
481 of the ESA program as promulgated in this chapter;

482 (b) The creation of the Education Scholarship Account
483 program does not expand the regulatory authority of the state, its
484 officers, or any school district to impose any additional
485 regulation of nonpublic schools, postsecondary institutions or



486 educational service providers beyond those necessary to enforce
487 the requirements of the ESA program; and

488 (c) Eligible schools, postsecondary institutions and
489 educational service providers shall be given the maximum freedom
490 to provide for the educational needs of their students without
491 governmental control. No eligible school, postsecondary
492 institution or educational service provider shall be required to
493 alter its creed, practices, admission policies or curriculum in
494 order to accept participating students.

495 (2) Eligible schools, or the parent or guardian who
496 submitted the ESA application, must submit student performance
497 data to the State Department of Education at the end of the school
498 year, including the individual results of the pre-assessment and
499 post-assessment required in Section 37-181-15(f).

500 (* * *23) In any legal proceeding challenging the
501 application of this chapter to an eligible school, postsecondary
502 institution or educational service provider the state bears the
503 burden of establishing that the law is necessary and does not
504 impose any undue burden on the eligible school, postsecondary
505 institution or educational service provider.

506 **SECTION 10.** Section 37-181-19, Mississippi Code of 1972, is
507 reenacted as follows:

508 37-181-19. The State Department of Education may receive and
509 expend contributions from any public or private source to fund
510 ESAs for participating students.



511 **SECTION 11.** Section 37-181-21, Mississippi Code of 1972, is
512 reenacted as follows:

513 37-181-21. If any provision of this law or its application
514 is held invalid, the invalidity does not affect other provisions
515 or applications of this law which can be given effect without the
516 invalid provision or application and to this end the provisions of
517 this law are severable.

518 **SECTION 12.** The following shall be codified as Section
519 37-181-23, Mississippi Code of 1972:

520 37-181-23. Sections 37-181-1 through 37-181-23, Mississippi
521 Code of 1972, shall stand repealed on July 1, * * * ~~2030~~ 2024.

522 **SECTION 13.** Section 12, Chapter 441, Laws of 2015, is
523 amended as follows:

524 Section 12. This act shall take effect and be in force from
525 and after its passage * * * ~~and shall stand repealed as of June~~
526 ~~30, 2020.~~

527 **SECTION 14.** This act shall take effect and be in force from
528 and after its passage.

